

FyI

# ZONINGPRACTICE

January 2005

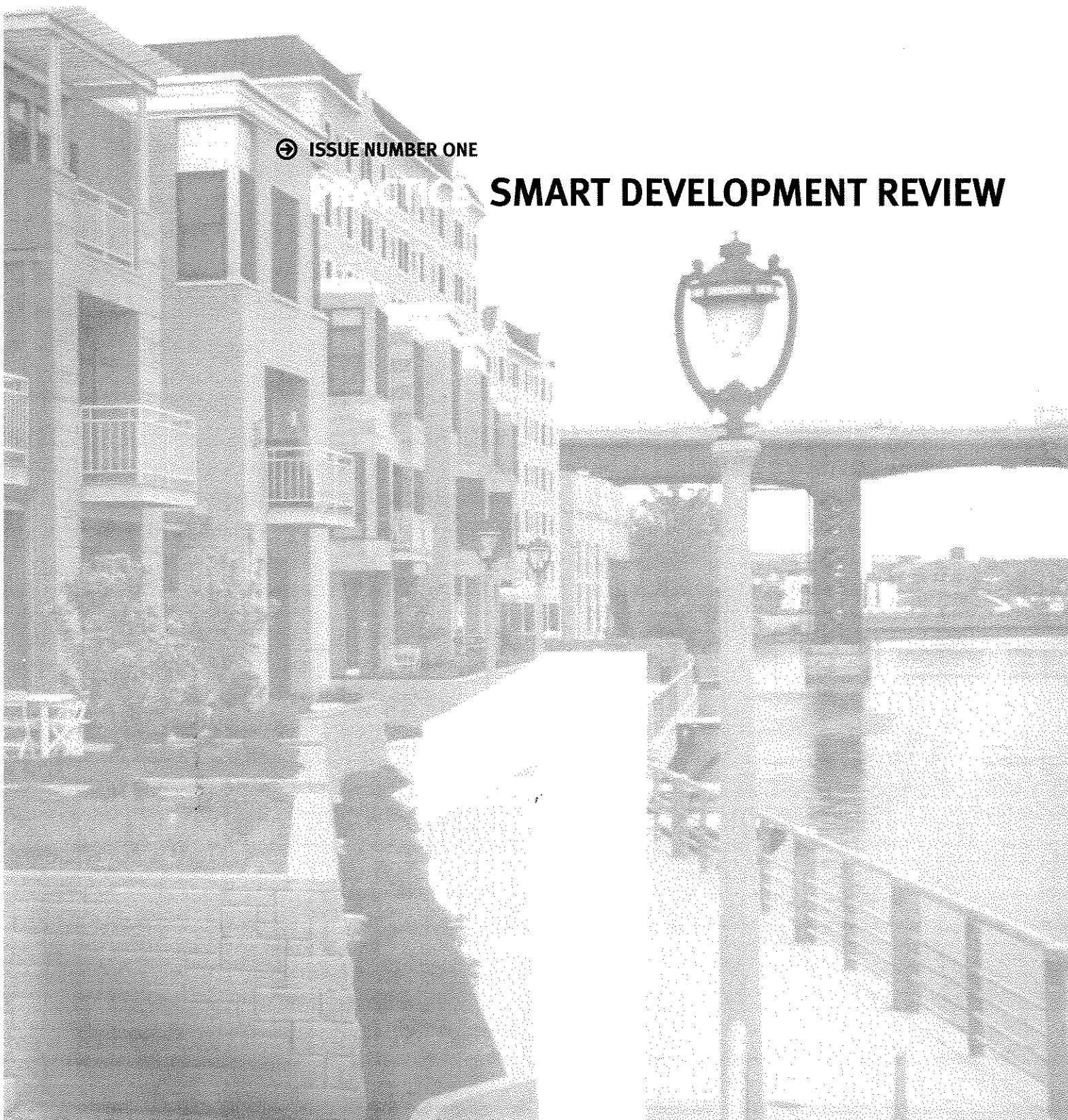
AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER ONE

PRACTICE

SMART DEVELOPMENT REVIEW



# The Development Review Process: A Means to a Noble and Greater End

By James van Hemert, AICP

*“You have no [entitlement] rights and you won’t have any rights until and unless we give them to you,”* began the senior planner at the opening meeting between the planning department and a developer preparing a rezoning application.

On that sour note commenced what was to become a long, miserable, and contentious rezoning process that left very few stakeholders satisfied. Ultimately, the final product was acceptable, but not remarkable.

The planner’s comment is perhaps an extreme example, yet is indicative of a not uncommon cultural frame of reference that views the developer as an untrustworthy and even unworthy adversary. The planner is the guardian of the public good: the developer cannot be trusted and may harm the public interest. Perhaps only this particular developer was singled out and treated as such because he was considered “bad” or was proposing an unpopular or even undesirable land-use proposal, but that is not an appropriate approach to customer service, nor likely to best achieve community goals.

At city hall, those managing their piece of the development-processing puzzle zealously defend the public interest as dedicated and loyal public servants. In their view, this is done for the greater public good. Most are committed, skilled, and dedicated to their work, putting in long hours (including many nights) often for relatively modest compensation.

In addition to facing the fervently dedicated, albeit sometimes recalcitrant staff, the developer applicant frequently faces a bewildering array of procedures and permit requirements. This bundle of approvals and permits may be called a system or process, but in many communities they effectively constitute an obstacle course requiring the endurance of

a decathlon runner and the political skills of a Machiavelli. Many regulatory systems are not systems at all. They merely increased one zoning amendment at a time, one plan at a time, one regulation at a time, and one process at time. “Secret codes,” “arbitrary rules,” “inconsistent interpretation,” and “inexplicable delays” unfortunately are familiar refrains echoed across the land by applicants and their consultants.

Local government’s  
tendency to divide  
responsibilities among  
various departments  
without strong  
coordination oversight  
also contributes to an  
organizational culture  
that impedes community  
development goals.

Contrary to the goals of all players in the development game, mediocre projects and unsatisfied stakeholders too often are the undesirable fruit of the development review process. Lost opportunities for creative and

innovative developments abound. Far too often, the most desirable developments are governed by the most complex regulations and review processes. In such an environment the best planners, designers, architects, and developers may simply move on to the next jurisdiction. This is a particularly acute downside for central cities, for by making development more difficult, growth is fueled at the suburban edges. In penalizing new, different, and ground-breaking development through extra scrutiny, planners provide incentive for the less risky standard cookie-cutter proposals. Financial resources that could be available for amenities and services are instead diverted to extended loan-carrying costs, higher interest rates, and the need to redesign and resubmit project proposals more often than should be necessary.

With great effort and frustration we are often achieving what nobody wants. In the words of the cartoon character Pogo: “We have met the enemy, and it is us.”

It is perplexing to ponder why we are still here after all these years. Perhaps it is not primarily a failure of good intentions, inadequate management techniques, or a lack of education and technology. More likely, the roots of the dilemma are cultural; they are the attitudes and behaviors of the profession, public planning departments, and local government in general.

At the broad professional level most professional planners undertake their work as a moral journey—a vocation rather than an occupation. The AICP Code of Ethics reflects this in its eloquent statement of responsibility to the

## ASK THE AUTHOR JOIN US ONLINE!

From February 14 to 28, go online to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. James van Hemert, AICP, will be available to answer your questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

### About the Author

James van Hemert, AICP, is executive director of the Rocky Mountain Land Use Institute at the University of Denver Sturm College of Law.

public. In their earnest pursuit of this mission, however, planners may fail to recognize the developer community as a legitimate public.

A cultural divide of divergent worldviews is expressed by professional jargon. At the local community level, planners viewing the big picture use words like "sustainability," "urbanist," "viewshed," "community values," and "visioning." The language of the development community, in focusing on specific projects, includes words such as "entitlement," "pro forma," "highest and best use," and so on. Various stakeholders in the process often understand shared words such as "takings" differently.

Local government's tendency to divide responsibilities among various departments without strong coordination oversight also contributes to an organizational culture that impedes community development goals. Management guru Tom Peters rails against "turf kings" and "power freak" middle managers sitting on little slips of paper until they are ready to act. For many, government processes epitomize the worst of bureaucracy.

To complete the picture of understanding, a framework of functional elements is necessary. At a fundamental level, functional elements are about the bureaucracy: the management of staff resources, citizen input, relationship between departments, external agencies, and the governance of interaction between clients and planners. The elements that are critical for our review and ultimately the success of the process include: (1) the objectives of a particular process, (2) the application requirements and steps, (3) quantitative and qualitative standards, (4) public participation opportunities and methods, and (5) the character of decision making—who decides what and where at various steps in the process.

Bureaucracy is generally tolerated, but our challenge is to find the right balance between too much red tape (where progress is stunted) and inadequate structures (where anarchy reigns). Streamlining the process can take a number of forms, including reduced application requirements, use of Internet and website technology, one-stop application and permit centers, pre-application conferences, hearing officers, and guaranteed processing review time frames.

All of it is necessary, but insufficient. It is the juxtaposition of cultural and functional elements that offers the most hope for significant progress. A culture of good will and trust as a foundation for customer-client service can effectively lubricate any manner of

process from the simple to the elaborate. In a context of multiple—and often conflicting—stakeholders, consider the model of the planner as a pragmatic facilitator of the public interests. Real-life case studies best help us understand this model.

Three communities representing different, yet recognizable, contexts were chosen for this issue of *Zoning Practice* because they exemplify the effective fusion of function and culture in establishing an environment conducive to meeting community goals and achieving great projects. These include:

- Milwaukee, the epitome of a Rust Belt industrial city that has seen both decline and rebirth;

### CRITICAL ORGANIZATIONAL CULTURAL CHARACTERISTICS

#### Big-picture framework

- Recognize the reality of multiple publics.
- Understand role of a "pragmatic facilitator of public interests."

#### Service

- Rules serve the mission. Do not be so rule-bound that you lose sight of the mission.
- Go above and beyond the call of duty in pursuit of the mission.
- Adopt a client-centered approach.
- Present a consistent message.
- Establish a solution-oriented business relationship.
- Use fair and ethical treatment.
- Know when to be flexible.
- Good customer service is not about saying "yes," but about all of the above.

#### Staff/human resources

- For development review staff, train and hire for "facilitator" competency.
- Empower staff to make decisions appropriate to their responsibilities and point in the process.
- Establish a team approach at all levels: between planning and customers, between department divisions, between city departments, and between planning and the community.
- Reward exceptional behavior and results—staff, customers, citizens.

- Aspen, Colorado, a mountain resort town with the type of urban growth problems many would envy; and
- Irvine, California, a large, mature, suburban planned community.

#### MILWAUKEE

The first-time visitor is struck by the elegance, rich appointments, and compelling beauty of the city's development center when she arrives for a permit application. This is very different from her previous experience in the city she moved from, where the offices were dingy, the architecture uninspiring, and the maze of hallways, counters, and please-take-a-number lines overwhelming. The first person

City officials confidently describe one of the key elements in getting to this point: a client-centered development review process that makes it easiest to achieve creative solutions rather than typical off-the-shelf mediocrity.

Milwaukee's stunning new art museum with soaring moving parts by the renowned Spanish architect Santiago Calatrava. Discussions with Martha Brown, deputy commissioner of city development, and John Hyslop, assistant planning director, make clear that the change is best explained in the breathtaking sweep of remarkable projects, ranging from the redesign of model front porches to the big box ingeniously planted into the traditional pedestrian-oriented fabric, and the dismantling of an ugly and divisive elevated freeway downtown.

Erase from the mind any images of Milwaukee from its grimy industrial past. Milwaukee today is trendier—a sparkling city of 600,000 on the shores of Lake Michigan. City officials confidently describe one of the key elements in getting to this point: a client-centered development review process that makes it easiest to achieve creative solutions rather than typical off-the-shelf mediocrity.

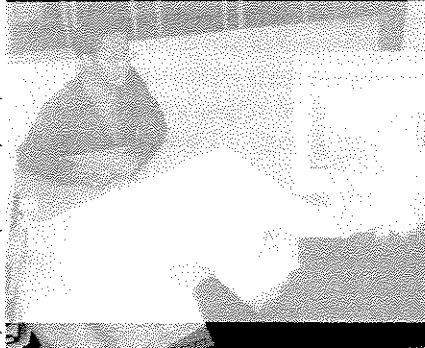
At the center of the change is the Milwaukee Department of City Development, the agency responsible for business and real estate development, planning, permitting, and public housing. "We try to understand what the developers need—their way of viewing the world," says Brown, "while being respectful of protecting the public interest." It is a balancing of worldviews.

Clear expectations engender trust in the development review process. The new zoning code was designed to communicate the rules

of Milwaukee's former mayor, John Norquist, and former planning director, Peter Park, Greenstreet describes what is happening in Milwaukee from an architectural and planning perspective as a "radicalized view of architecture" that reflects higher public expectations. Certainly, some of this can be attributed to the "Calatrava effect"—the raised consciousness resulting from



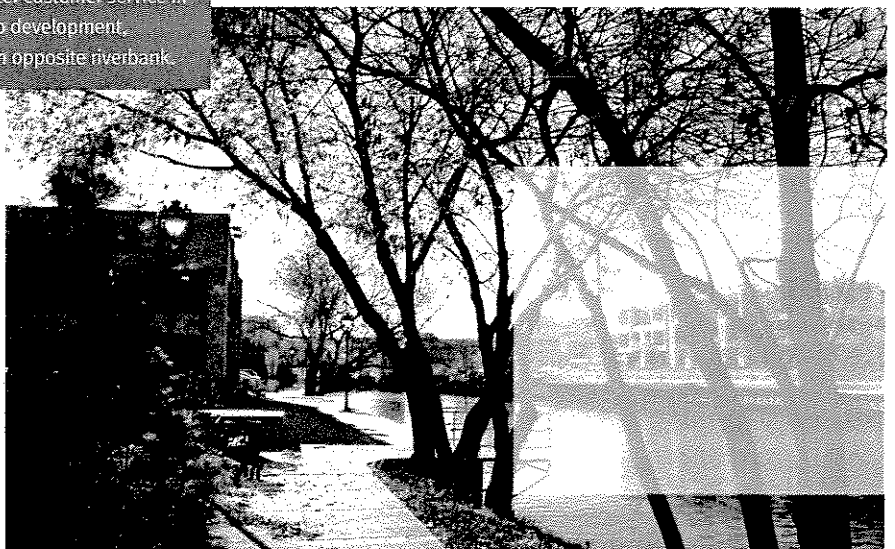
City of Milwaukee Department of City Development



⌚ Clockwise from left: Development Center customer service in Milwaukee; Trostel Tannery site prior to development; Milwaukee; view of Trostel Square from opposite riverbank.

she approaches is the right person with the right answers. This individual spells out clearly for her what she has to do. This establishes clear expectations and a definite timeline for completion of the process and approval.

This remarkable experience is the hallmark and beginning point of a development review process and organizational culture that were years in the making. "It has taken a sea change in city government to achieve better development faster," says Robert Greenstreet, the former chair of the city's planning commission. Building on the legacy





clearly and make it easiest to achieve community goals, particularly with respect to design. Greenstreet says this, in turn, makes the process more predictable, addressing the uncertainty factor that so often is the Achilles heel of development.

#### The Process Illustrated

**Planned Development within the Riverwalk Site Plan Overlay District.** Application requirements for site plan review within the city's riverwalk site plan overlay district are clearly spelled out on the department's web page. Consistent with the philosophy of making the process the least cumbersome for the most desired outcomes, the overlay district establishes design standards previously approved by the common council. The city's plan commission reviews and approves applications within one to three weeks. A higher level of design review is undertaken when there is heightened public interest in the case of zone changes, city financial investment, and the sale of land by the city. For complex projects, a seasoned case manager is assigned to serve as an advocate through the approval process. A predevelopment roundtable conference may be convened, bringing together representatives of the developer and all necessary city departments, representing all interests right down to the plan examination level. The applicant is forced early to contemplate many issues, which in turn become everyone's issues—"our" issues rather than developer issues.

In the case of a rezoning request, typically processed as a planned development, requirements include two public hearings and review by the plan commission, a review by the zoning, neighborhoods, and development committee of the common council, and final approval by the full council. From start to finish, this process takes two to three months, and somewhat longer for more complex projects.

Strengths of the review process include predictability, clear standards, relatively low costs, a customer-centered approach, shared ownership of problems and solutions, and a city willing to step up to the plate and fund its share of infrastructure. In the words of Bob Monnat, chief operating officer of the Mandel Group, "Everyone is rowing together." A weakness of the much-vaunted

process is that ultimately there is no single development guru with final authority to mediate disputes that may arise between cabinet-level departments such as City Development and Public Works.

**Trostel Square.** Planted along the banks of the Milwaukee River on the site of a former tannery, Trostel Square provides new in-town housing for 126 households in a newly established neighborhood. It is a component of an 80-acre neighborhood in the Beer Line B redevelopment area, respecting and expanding the traditional urban fabric of grid streets, and providing for a comfortable and accessible public realm that includes six connections to the riverwalk and an intimate public square. An exceptional 39 percent of the site is accessible to the public. The Mandel Group development accomplishes the objectives of infill development, revitalization of

the river corridor, the creation of highly functional and desirable public amenities, a pedestrian orientation, and a beautiful and unique public realm.

Trostel Square is a stunning example of meeting multiple community objectives through a development review process that is predictable, efficient, mutually trusting, and results in successful clients and stakeholders.

#### IRVINE

The City of Irvine, California, one of the largest master-planned communities in the country, gracefully drapes the Lomas de Santiago and San Joaquin Hills of greater Los Angeles. With 171,000 residents today, another 50,000 are expected to arrive by full build-out.

Like the city itself, the development department's operations are tidy and efficient. "Job number one is customer satisfaction," says Mike Haack, manager of development services, in describing the city's organizational culture. Staff performance is graded on the degree to which they satisfy customers. Calls to developers are returned within four hours. Projects are reviewed efficiently, as project managers set workable completion deadlines. Haack reports that he rarely receives complaints—a veritable manager nirvana. The city's strictly hierarchical organization establishes clear staff roles and ensures a high level of quality control, while at the same time promoting problem solving on a team basis. Bill Jacobs, principal planner, enthusiastically describes the focus on finding solutions in getting to "yes" to the extent allowable. Getting there involves a high level of coordination among city departments through the active and empowering role played by project managers, who communicate on behalf of various municipal departments with one voice.

All development review processes commence at a single point: the City of Irvine Development Assistance Center. A single permit specialist handles permits requiring nondiscretionary review, such as building and sign permits. Distribution of the application among various departments, such as building, zoning, engineering, and police, fire, and transportation services, is handled behind the counter.

The development services division, with representative staff at the assistance center, handles items requiring discretionary review

#### WHAT APPLICANTS WANT

1. Predictability
  - Clear expectations, no surprises
  - Clear process and decision points
2. Fair treatment
  - Rules are the same for everyone
  - No "good" or "bad" developers—offer trust and be trustworthy
3. Accurate and accessible information
  - Easy to find and understand
  - Clear application requirements and standards
4. Timely processing
  - Establish early tentative dates for hearings
  - Guaranteed review turn-around times
  - Published commission and council meeting dates
5. Reasonable and fair costs
  - Application fees
  - Development commitments
  - Impact fees
6. Competent staff
  - Staff team should have a balance of "hard" technical skills and "soft" people skills
7. Elegant regulations
  - That fit
  - That are easy to navigate
  - That are rational
  - The most desired outcomes are easy to meet

such as conditional use permits and rezoning applications. This division comprises the project entitlement team, development assistance group, and code compliance.

#### The Process Illustrated

**Discretionary Review.** The discretionary review process serves as our view into the cultural and functional workings of the department. With minor modifications to accommodate different review boards, the process itself is essentially similar for all types of review. The objective of its design is to find

tionary project such as a rezoning will take 12 to 18 months for completion.

A project manager assigned to the case is responsible for all coordination and communication. His role is that of a wheel hub through which all communication flows—the “go-to” person. Applicants may not separately negotiate solutions with engineering or fire departments. The project manager must be present at all city and outside agency meetings. First-process steps involve referrals to affected departments

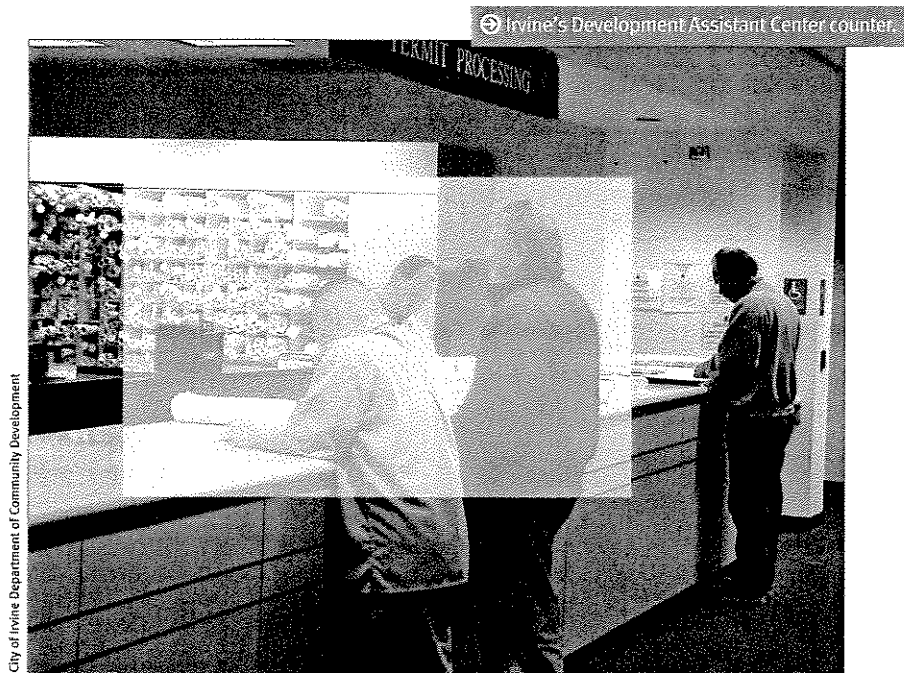
collaborative fashion. Subsequently, comments are provided to the applicant, and, depending on the breadth and depth of changes required, the review process may repeat itself again prior to resolution and a public hearing.

The case manager is empowered with wide discretionary review authority, responsible for ensuring code compliance and coordination, and packaging referral comments as one voice to the applicant. Standards of review are detailed in the city’s voluminous zoning code, available and searchable online at Municipal Code Corporation ([www.municipalcode.com](http://www.municipalcode.com)).

The strengths of Irvine’s discretionary review process are its predictability, polished professional streamlining, a high degree of coordination among stakeholders, a high degree of trust and responsibility placed on the project manager, and an early invitation to citizen participation. The process is weakest with respect to the relatively high cost of review and the length of time it takes to complete complex projects.

Jeff Davis, vice president of entitlement for The Irvine Company, describes the firm’s relationship with the planning department as a strong partnership where the dialogue allows for creative ideas and flexibility. The trust that has developed allows for “shades of gray” and an inclusionary rather than reactionary environment in solving problems. Other clues abound that point to a common culture. For example, “Manager of Entitlements” is a title not typically used by government planners, but it shares the language with the development community and recognizes a common goal. The culture manifests many business characteristics, yet there is recognition that it is a government that serves the interests of many publics.

**Central Park.** The consistency with which excellent outcomes are achieved presents a challenge in choosing a project that stands out as a clear result of the effective cultural and functional elements of the development review process. Nevertheless, Haack describes a recently approved signature project: Central Park, a 40-acre mixed-use project in the Irvine Business Complex that broke the development mold. To make the project appealing to the decision makers, staff “moved mountains,” says Haack. Through a highly negotiated and collaborative process, the vision of the devel-



City of Irvine Department of Community Development

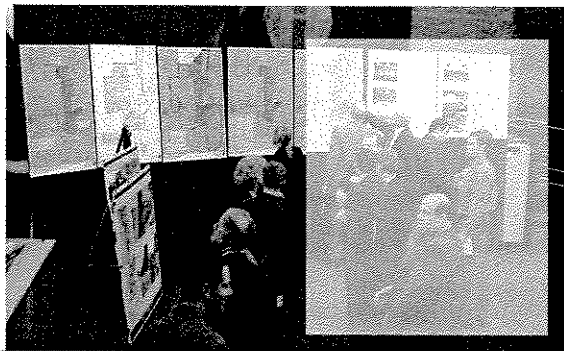
timely and satisfactory development solutions for all customers.

Application requirements are clearly spelled out and forms are available online on the city’s easy-to-navigate website. The cost of processing is charged according to the hours spent by staff and varies according to the size of the project and the complexity of the issue. A deposit check sets up a trust account for the developer. The California Permit Streamlining Act requires a determination of application completeness within 30 days.

The city’s business plan requires staff to establish a tentative completion date for all processes. A complete listing of all discretionary projects under review is accessible on the city’s website and details the project description, tentative schedule, the body granting approval, and the responsible planner. Typically, a discre-

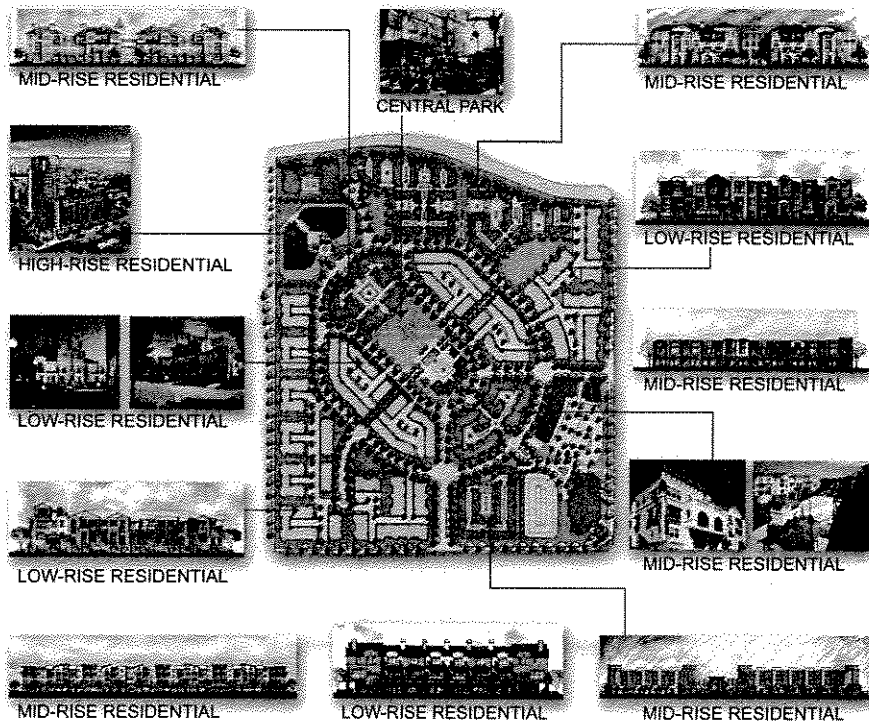
The strengths of Irvine’s discretionary review process are its predictability . . . professional streamlining . . . coordination . . . trust and responsibility . . . and an early invitation to citizen participation.

and agencies and a “hello neighbor” letter inviting citizen participation early in the process. For more complex proposals, an internal development review committee is convened to raise and resolve issues in a



City of Irvine Department of Community Development

⊕ Above: Public hearing in Irvine; below: Conceptual images of Central Park.



Lennar Communities

oper, Lennar Communities, and staff coalesced into a project of which all stakeholders are satisfied and proud.

#### ASPEN

Lying in one of the most beautiful valleys in the world, Aspen, Colorado, has real estate prices to match its mountains. Here, community development is a constant challenge for a planning department intent on maintaining an affordable place for the work force in this world-class mountain resort town.

"The relationship between the developers, the city, and the Convenience and Welfare of the Public (COWOP) task-force team was energized, full of enthusiasm, and was fun," says Tim Belinski, vice president of Obermeyer

Redevelopment Company. Joyce Allgaier, deputy planning director for Aspen, confirms his view, saying they work with an incredible group of professional planners, architects, lawyers, and developers who make the planning department's job easier. Allgaier says the organizational culture is team-based with a great deal of focus on customer service. Like a professional service firm, the department bills hours and clients value their time, enhancing a fully professional relationship.

Developers and department staff agree there is a great deal of trust between the development community and the community development staff. Matters of concern are brought up openly and early, avoiding surprises. Fair treatment and understanding involvement deliver

satisfaction through the whole process, even when applicants do not get exactly what they want. It is acceptable to agree to disagree and maintain a positive relationship.

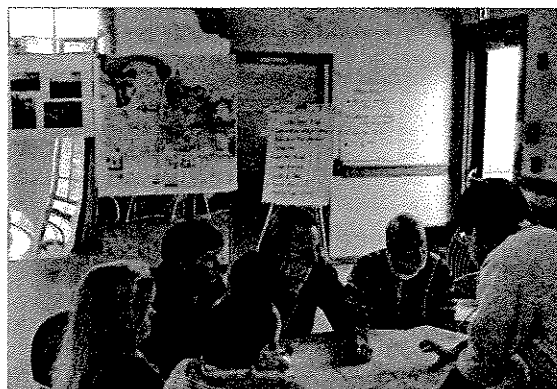
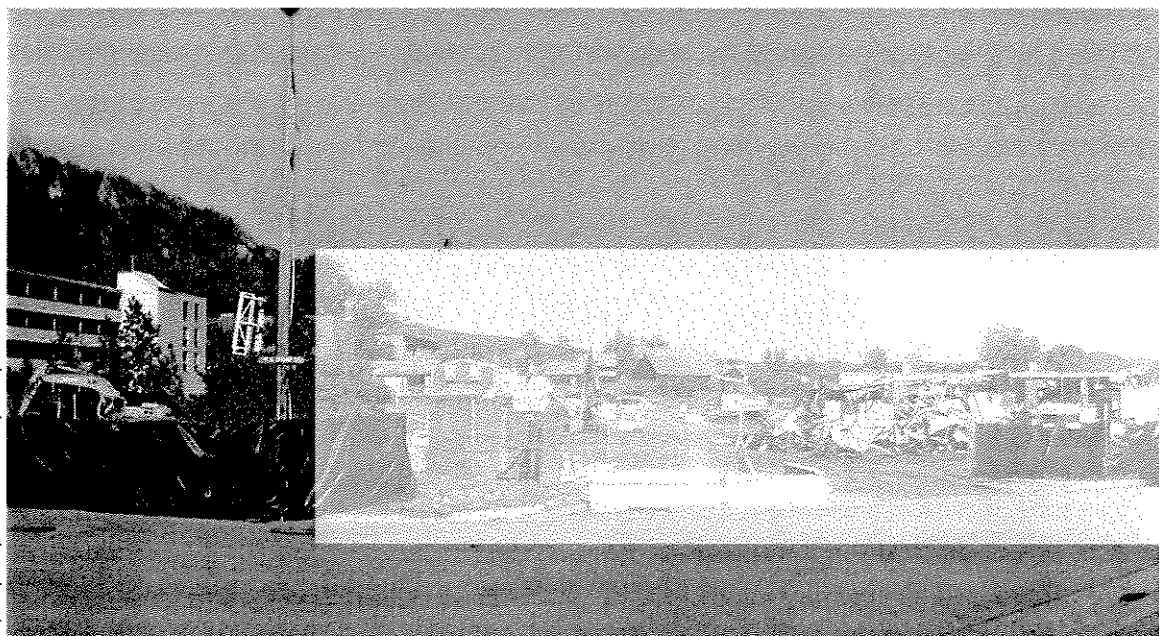
#### The Process Illustrated

**COWOP.** COWOP is a development review process for public projects determined by the city council to be reasonably necessary for the convenience and welfare of the public. Such projects might be affordable housing, parks and recreation, public buildings, or transportation projects. It also may include joint public-private endeavors with a public benefit. Aspen, a home-rule municipality, is vested with the authority and power to exempt certain types of development from its land-use code. Still, COWOP was necessary because certain city-initiated applications created the situation where the city council was owner and/or financier, applicant, and final judge in the formal development review process. This presented legal and political problems. Commissioners for planning and zoning, historic preservation, and other affected interests felt these projects were "cooked" before receiving their review and expertise, and that recommendations were being overlooked in the process. Additionally, applicants were bounced back and forth to different review boards, and plans were changed at different levels.

The goals of the process are to involve interest groups early in the conceptual stage of the project and to make the review process shorter, more cost-effective, and more efficient. It is not intended to minimize review or reduce standards, but rather to get key decision makers, advisory boards, and staff applicants into the process early enough in the evolution of a development proposal to ensure that it meets broad city objectives.

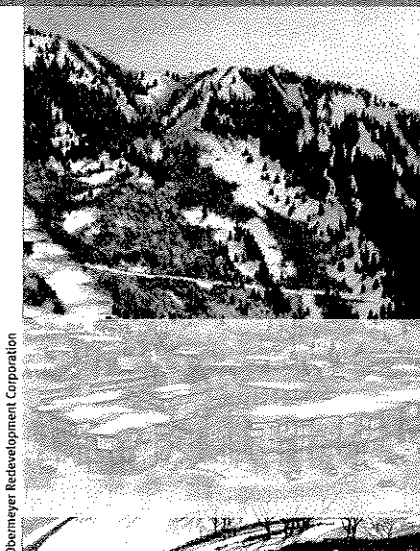
The COWOP process is a freeform development review process determined to be as complex as the development proposal demands. The primary functional structure involves five steps:

1. Determination by the city council of COWOP status, advisory team representation, including members of all boards (among them the city council), and preferred timeline.
2. Issue identification by an interdepartmental development review committee. The applicant provides conceptual site plan



⌚ Above: Aspen's Obermeyer Place site prior to redevelopment. Center left: Aspen's COWOP task force site visit of the Obermeyer Place redevelopment site. Glass company building in background. Center right: A meeting of Aspen's COWOP task force. Below: Artist's aerial view rendering of Obermeyer Place.

The goal . . . is not intended to minimize review or reduce standards, but rather to get key decision makers, advisory boards, and staff applicants into the process early enough . . .



Obermeyer Redevelopment Corporation

alternatives and proposed program elements. Expensive engineering and architectural drawings are not expected.

3. Team meetings with public notification. Planning staff runs the meetings, but complex development projects may require the use of a facilitator. The team ultimately recommends a preferred alternative development plan and prepares detailed plans.
4. Upon evaluation of the recommendation, the council makes a final determination regarding the applicability of COWOP status.
5. Official council action with the first reading of an ordinance, public hearing, and final adoption approving the development proposal.



There is no deviation from Aspen's area community plan or land-use code regulations, including all matters of site design, circulation, environmental matters, architectural design, availability of services, and neighborhood compatibility.

The highly interactive process is facilitated rather than directed by planning staff. The team makes recommendations directly to the council, bypassing the planning and zoning commission and all other commissions.

Strengths of the process include:

- projects of higher quality;
- potentially shorter development review time frames;
- fewer soft costs and, therefore, better use of public funds;
- issues identified up front and resolved early;
- less bouncing back and forth between commissions and boards;
- cross-fertilization of ideas by affected interests and commission and board areas of expertise;
- early citizen involvement;
- building public trust;
- serving an educational function; and
- council representation and presence in the team.

Increased public mistrust of this "government-only" streamlining is one potential weakness of this process. Others include a "design by committee" result, a potentially longer development review time frame if the process gets bogged down, more meetings for volunteer commission and board members, planning and zoning commission members feeling excluded, and a demanding process for citizens.

**Obermeyer Place.** The mixed-use, 44-unit condominium project with 40,000 square feet of affordable commercial space is a joint public-private venture. The 2.5-acre site, zoned service commercial industrial (SCI), had a few dozen commercial tenants in a variety of older buildings—mostly of undistinguished architectural character—but including several historical buildings owned by the city. Tenants included the basic service commercial uses of ski tuning, florist shop, glass shop, auto service, and some light industrial uses. According to Belinski, the site was increasingly run down and nonfunctional, and ripe for redevelopment.

#### COMPARISON CHART ON CRITICAL FUNCTIONAL ELEMENTS

	Milwaukee Planned Development	Irvine Discretionary Review	Aspen COWOP
<i>Information</i>			
Relevant information on website	Yes	Yes	COWOP info not on website
Forms available on website	Yes	Yes	Yes
Code accessibility	Online, PDF files by code	Online, key word searchable	Online, PDF files by code chapter
<i>First Contact</i>			
Review for application completion	No minimum	30 days	No minimum
One-stop application and permit center	Yes	Yes	Yes
Clear expectations	Yes	Yes	Yes
Fees	Modest, set fees	Trust account and hourly billing	Hourly billing
<i>Review</i>			
Predevelopment conference	Yes	Yes	Yes
Role of case manager	Coordinate and advocate	Coordinate, single formal contact	Coordinate and facilitate
Referral	Yes	Yes	Yes
Outside professional facilitator	No	No	Yes, if needed
Neighborhood participation	Midway in process	Early in process	Early and extensive
Process duration	2 to 3 months	Up to 18 months	Up to 18 months
Commission and board review	Yes	Yes	Only council
Plan commission	Yes	Yes	No—representatives only
Staff recommendation	Team consensus	Independent judgment	Team consensus
Approval conditions agreed to by applicant in advance of hearing	Yes	Yes	Yes
Staff report availability to applicant	4 to 5 days prior to hearing	One week prior to hearing	One week prior to hearing

Rather than merely pursuing the highest and best use, which would likely comprise trendy boutiques and real estate offices, the city and Obermeyer decided to pursue a mixed-use project that preserved the critical service commercial uses being priced out of Aspen, avoiding the inevitable move to more affordable locations 30 miles "down valley" toward Carbondale, which would increase traffic congestion and inconvenience residents.

The project qualified for the COWOP process, ultimately requiring 15 meetings and involving 20 decision makers on the task force. These included representatives of the existing commercial tenants, the housing office, historic preservation commission, and a cross section of all approval groups and city departments. Early on, says Belinski, the process gave confidence to the Obermeyer group that they had a bankable project. Specifically, the early clarification of goals and criteria for defining success, the city's willingness to adjust formulas, and the development group's openness to new ideas, produced a project that "was better than just on our own," says Belinski.

#### CONCLUSION

In unique ways reflecting their geographical, political, and cultural contexts,

#### CONTACTS

City of Milwaukee  
Department of City Development  
414-286-5900  
Development Center  
414-286-8211  
[www.mkedcd.org](http://www.mkedcd.org)

City of Irvine  
Department of Community Development  
949-724-6470  
Development Assistance Center  
949-724-6308  
[www.ci.irvine.ca.us](http://www.ci.irvine.ca.us)

City of Aspen  
Department of Community Development  
970-920-5090  
[city.aspenpitkin.com/index.cfm](http://city.aspenpitkin.com/index.cfm)

The Rocky Mountain Land Use Institute  
303-871-6319  
[www.law.du.edu/rmlui](http://www.law.du.edu/rmlui)

Specifically, see presentations on Aspen's COWOP process, and "Removing Roadblocks to Faster Development Approvals," by Joyce Allgaier, AICP, and Don Elliott.

Milwaukee, Irvine, and Aspen illustrate how excellence is achieved by meeting multiple community objectives. They lead the way in demonstrating how a cultural shift, a customer-centered approach, and collaboration at a citywide level build a foundation for excellence. Reinforcing and flowing from this change are the functions of a streamlined, reasonable, fair, and clear development review process. Getting to this point requires polished management skills, knowing what codes and procedures to give up, a willingness to abandon turf and share control, a clear understanding of community goals, and an intelligent and creative code toolbox.

The planner's role in this noble endeavor is that of a pragmatic, option-exploring facilitator who lubricates the dialogue among the full array of public interests to arrive at solutions. Not everyone gets his way, but everyone participates and is recognized and heard. Because trust is built among the various parties, greater success results for all parties. Ultimately, those involved achieve an excellent result at both the project and community levels.

#### RESOURCES

- Colorado Revised Statutes 31-23301.  
This legislation sets the legal foundation for a varied land use.
- Dalton, Linda, Charles J. Hoch, and Frank So, eds. 1986. *The Practice of Local Government Planning, Third Edition*. International City/County Management Association.  
The planning profession's bible, the "green book" devotes a mere paragraph to the development review process.
- "Denver's Development Review Process: Can it be Fixed?" 2003. Unpublished paper. Denver Chapter of the American Institute of Architects.  
This paper describes a system, which, in the view of the architect community, unintentionally produces mediocre development and discourages high-quality architecture.
- Hoch, Charles J. 1994. *What Planners Do: Power, Politics, and Persuasion*. Chicago: Planners Press.
- McClendon, Bruce. 1991. "Customer Service: a New Philosophy Towards Effective City Planning." *Journal of the American Planning Association*, 57, no. 2 (spring): 205-211.  
The author provides a compelling argument for viewing developers as one of the publics served by planners.
- Osbourne, David, and Ted Gaebler. 1992. *Reinventing Government*. Plume-Penguin Group.
- Peters, Tom. 2003. *Re-Imagine! Business Excellence in a Disruptive Age*. London: Dorling Kindersely.
- Porter, Douglas. 1982. "Helping Your Community Streamline the Development Process," *Urban Land*, May, 18-25.



## NEWS BRIEFS

### CALIFORNIA ENACTS FORM-BASED ZONING LEGISLATION

By Rebecca Retzlaff, AICP

Legislation institutionalizing form-based zoning and encouraging mixed land uses and housing types in California went into effect on January 1, 2005. Governor Arnold Schwarzenegger signed the bill (A.B. 1268) on July 20, 2004.

The bill added new language to Section 65302.4 of the California Government Code, concerning land use, as follows:

The text and diagrams in the land-use element that address the location and extent of land uses, and the zoning ordinances that implement these provisions, may also express community intentions regarding urban form and design. These expressions may differentiate neighborhoods, districts, and corridors, provide for a mixture of land uses and housing types within each, and provide specific measures for regulating relationships between buildings, and between buildings and outdoor public areas, including streets.

The impetus for passage of the law was a meeting at the Governors Office of Planning and Research with the Bay Area New Urbanists and Congress for the New Urbanism co-founder, Andres Duany, who were asked to prepare a white paper on smart growth policies in California. The text for the new law was taken directly from the paper's recommendations.

According to the white paper, standard zoning practice in California did not promote New Urbanist-style developments. It says, "The current zoning and subdivision ordinances of most California cities and counties are use-based—that is, their primary consideration is the grouping of similar and related land uses while separating them from all other uses that are perceived to be potentially incompatible." Use-based zoning is what some New Urbanists point to for hindering smart growth efforts, claiming such codes make it impossible to construct walkable, compact, mixed-use neighborhoods in California's historic cities and towns.

Conversely, form-based zoning seeks to remedy the problems of used-based zoning by integrating streets, open space, housing, commercial development, and neighborhoods. The white paper states, "the form-based code contains a series of flexible formulas and design conventions that ensure that the buildings will be in scale with the streets and other public spaces, and that a flexible mix of uses may be provided within each neighborhood..."

The white paper also recommends that California:

- provide model language for form-based codes;
- recommend the inclusion of smart growth in general plans;
- create incentives for the adoption of form-based codes; and
- provide tax incentives and infrastructure support for transit-oriented development.

Laura Hall, a California-based New Urbanist planning consultant and a co-author of the white paper, says the legislation is important for two reasons: (1) clarifying in the government code that form-based general plans and zoning codes are legal and (2) the legislation will have an impact on the education of new planners in California. "Planning students will now be explicitly taught from the very beginning that there is another option in planning and designing towns, one that is based on how a place is experienced and secondarily on land uses," Hall says.

While California law did not previously preclude form-based zoning, it was never encouraged or even suggested. The language dictating the contents of general plans encouraged the separation of land uses into respective districts for housing, business, industrial, and other land uses. The result is a land-use pattern characterized by sprawling, auto-oriented developments instead of pedestrian-scale neighborhoods with a mix of uses.

Form-based zoning seeks to remedy the problems of use-based zoning by integrating streets, open space, housing, commercial development, and neighborhoods.

Prior to passage of the law, several California communities adopted form-based zoning "primarily as an implementation mechanism for the specific plan, a provision in the state code authorizing legislatively adopted development plans for geographic subareas of a community," say David Rouse and Nancy Zobl (see *Zoning Practice*, May 2004). A recent California Governors Office of Planning and Research survey says Arcata, Burlingame, Cathedral City, Ceres, Encinitas, Monrovia, Petaluma, Rio Vista, and Sonoma have either a form-based general plan or zoning ordinance.

Despite such examples, some California communities were apprehensive of its legality until enactment of the new law. When Hall's firm was preparing a form-based code for a small city in northern California, the city's land-use attorney, questioning the legality of the concept, stopped the process. "But from this point on, there won't be any question about [the] legitimacy [of form-based zoning and planning] as planning tools," Hall says.

Hall says reaction to the new law from planners in California is positive. "It's an exciting time to be a planner in California. There are not only new planning tools available but new rules as well that state very clearly that the nature of planning from this point on is forever changed in California," she says. The new law will result in better planning and better communities in the state because the historic pattern of pedestrian-oriented, mixed-

use towns and cities is now institutionalized in California state law, Hall says.

Some California planners urge caution when adopting form-based codes. According to planning and historic preservation consultant Diana Painter, form-based zoning is a new, largely untested concept, and planners need to assess potential impacts in order to avoid problems. "As faulty as [traditional] zoning can be, we know many of the pitfalls from trial and error. Some of the implications [of form-based zoning] need to be tested," she says. Painter points to a Petaluma example where some parking requirements under form-based zoning were excessive in comparison to traditional zoning.

A packet of information about the California form-based zoning law, including A.B. 1268, background reports, and the white paper, is available to *Zoning Practice* subscribers by contacting Michael Davidson, Editor, *Zoning Practice*, American Planning Association, 122 S. Michigan Avenue, Suite 1600, Chicago, IL, 60603, or by e-mailing [mdavidson@planning.org](mailto:mdavidson@planning.org).

Rebecca Retzlaff, AICP, is a researcher with the American Planning Association and a Ph.D. candidate in urban planning and policy at the University of Illinois at Chicago.

Cover photo: Trostel Square in Milwaukee. This development, on the site of a former tannery, builds on the legacy of former mayor John Norquist and former city planner Peter Park. No longer merely Rust Belt, Milwaukee today is modern and more livable.

#### VOL. 22, NO. 1

*Zoning Practice* (formerly *Zoning News*) is a monthly publication of the American Planning Association. Subscriptions are available for \$65 (U.S.) and \$90 (foreign). W. Paul Farmer, AICP, Executive Director; William R. Klein, AICP, Director of Research.

*Zoning Practice* (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and Michael Davidson, Editors; Barry Bain, AICP, Fay Dolnick, Josh Edwards, Megan Lewis, AICP, Marya Morris, AICP, Rebecca Retzlaff, AICP, Lynn M. Ross, Sarah K. Wiebenson, Reporters; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

Copyright ©2005 by American Planning Association, 122 S. Michigan Ave., Suite 1600, Chicago, IL 60603. The American Planning Association also has offices at 1776 Massachusetts Ave., N.W., Washington, DC 20036; [www.planning.org](http://www.planning.org).

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association. Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.